

**SUE ELLEN WOOLDRIDGE**  
United States Department of Justice  
Environment and Natural Resources Division  
Washington, D.C.  
**NELSON COHEN**  
United States Attorney  
Anchorage, Alaska  
**MARK A. NITCZYNSKI**  
US Department of Justice  
Environmental Defense Section  
1961 Stout Street - 8<sup>th</sup> Floor  
Denver, CO 80294  
Phone: (303) 844-1498  
Fax: (303) 844-1350  
**RICHARD L. POMEROY**  
**DANIEL COOPER**  
Assistant United States Attorney  
District of Alaska  
Federal Building & U.S. Courthouse  
222 West Seventh Avenue, #9  
Anchorage, Alaska 99513  
Telephone: (907) 271-5071

Attorneys for Plaintiff United States of America

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| <b>UNITED STATES OF AMERICA,</b>    | ) |                               |
|                                     | ) |                               |
| Plaintiff,                          | ) |                               |
|                                     | ) | Case No. A-01-378 Civil (RRB) |
| v.                                  | ) |                               |
|                                     | ) |                               |
| <b>CLARENCE ABELDGAARD,</b>         | ) | <b>STATUS REPORT</b>          |
| <b>OCEANVIEW ENTERPRISES, INC.,</b> | ) |                               |
| <b>CLOYD MOSER and MODEB</b>        | ) |                               |
| <b>INVESTMENTS,</b>                 | ) |                               |
|                                     | ) |                               |
| Defendants.                         | ) |                               |
| _____                               | ) |                               |

Pursuant to the August 31, 2006 Minute Order From Chambers Requesting Status Report [Docket 154], Plaintiff United States of America ("United States") hereby submits this Status Report.

1. The United States' claims under the Second Amended Complaint against Clarence

Abeldgaard, Oceanview Enterprises, Inc. ("Oceanview") and Geraldine Barling have not been resolved.<sup>1/</sup>

2. As this Court is aware, this Court previously has held both Mr. Abeldgaard and Oceanview liable for, among other things, the illegal discharge of fill material at twenty-two violation sites. Order Granting Plaintiff's Motion for Partial Summary Judgment (Aug. 21, 2003) at 1-2, 4. The United States made several attempts to negotiate with Mr. Abeldgaard and Oceanview but those efforts were fruitless. Among other things, Mr. Abeldgaard contended that neither he nor Oceanview had the financial ability to pay for a civil penalty, restoration of the illegally filled violation sites or a meaningful supplemental environmental project (which could reduce the amount of the civil penalty).

3. After Mr. Abeldgaard and Oceanview failed to provide meaningful responses to the United States' discovery requests, the United States performed its own extensive research into the finances of Mr. Abeldgaard and Oceanview, and produced an expert report on those issues. That report also included an analysis of Ms. Barling's finances, which demonstrated her involvement in the financing and operation of Oceanview.

4. On September 30, 2005, based on the United States' research and the opinions of its financial expert, the United States filed its Motion to Amend Complaint to Add Geraldine

---

<sup>1/</sup> On July 6, 2005, the Court entered the Consent Decree With Defendants Cloyd Moser and Modeb Investments, which resolved the liability of Cloyd Moser and Modeb Investments under the First Amended Complaint.

Barling as a Defendant, based on piercing the corporate veil of Oceanview. The Court granted that motion on November 3, 2005.

5. After the United States promptly filed and served the Second Amended Complaint, counsel for Ms. Barling filed three motions for extensions of time to file an answer. See Docket Nos. 145, 147, 149. The Court granted those motions, resulting in a due date of May 26, 2006. See Docket No. 150. To date, no answer has been filed on behalf of Ms. Barling. See Docket No. 152.

6. The United States and Ms. Barling have been engaged in settlement negotiations since early January, 2006. During that time, however, Ms. Barling has taken extraordinary lengths of time to provide two settlement proposals.

7. Ms. Barling provided her second settlement proposal on August 6, 2006. The August 6, 2006 settlement proposal contained a number of complex contingencies, reservations or prerequisites before certain required environmental restoration work items can be performed.

8. As set forth in the Status Report filed by the United States on August 31, 2006 [Docket 153], the United States believed that sending a draft consent decree was the most effective way to move the settlement process forward. Accordingly, the United States drafted a consent decree, including a draft restoration plan that provides, inter alia, detailed specifications for restoration work at various sites, timelines for completing the work, and success criteria for determining whether the work was completed properly. The United States provided that draft consent decree and restoration plan to counsel for Ms. Barling on November 2, 2006, and asked for a response by December 1, 2006. The United States continues to maintain all of its rights in the litigation, which has not been stayed.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
UNITED STATES DEPARTMENT OF JUSTICE

/s/ Mark A. Nitzynski  
MARK A. NITCZYNSKI  
Environmental Defense Section  
UNITED STATES DEPARTMENT OF JUSTICE  
999 18<sup>th</sup> Street, Ste. 945  
Denver, CO 80202  
PHONE: (303) 312-7300  
FAX: (303) 312-7331

NELSON COHEN  
United States Attorney  
District of Alaska  
RICHARD L. POMEROY  
Assistant U.S. Attorney

OF COUNSEL:  
DAVID ALLNUTT  
U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION X  
Seattle, Washington

Attorneys for Plaintiff United States

CERTIFICATE OF SERVICE

I, Mark A. Nitzynski, certify that on this November 6, 2006, I caused to be filed electronically the foregoing STATUS REPORT with the Clerk of Court using the CM/ECF system, which sends a Notice of Electronic Filing to Darryl L. Thompson (counsel for Defendant Gerladine Barling), and that I caused hard copies of the foregoing Status Report to be served by United States mail on the following persons:

Lawrence V. Albert  
P.O. Box 200934  
Anchorage, AK 99520

Counsel for Cloyd Moser and Modeb Investments

C.E. Abeldgaard  
Oceanview Enterprises, Inc.  
P.O. Box 891  
Homer, Alaska 99603

*Pro Se*

/s/ Mark A. Nitzynski  
MARK A. NITCZYNSKI